

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Does it not distort the issue to combine these? Suppose a person desired — and I do not, incidentally — suppose a person desired a clear-cut vote on the question of whether the section 11, as amended, should remain as adopted.

THE CHAIRMAN: If so, you could vote against the reconsideration of Amendment No. 18. That would end the matter and leave it that way.

DELEGATE JAMES: But I understand the motion is being combined.

THE CHAIRMAN: The motion is being combined. The Chair stated it would submit each separately. The first question submitted will be reconsideration of Amendment No. 18. If that is not carried, that is the end of the matter.

Delegate Bothe.

DELEGATE BOTHE: Mr. Chairman, fellow delegates, we have never in this State had a recognition of grand jury in the constitution. We have, however, under the Maryland Rules of Procedure, Rule 708, a right of an accused to a grand jury indictment in all felony cases and such remarks as I will make do not go in derogation of that right.

I would assume that it will continue whether or not the amendment to put the grand jury into the constitution stays or goes.

I would suggest to you that the placing of the right to indictment by a grand jury in the new Maryland constitution is a backward step. The right to indictment by grand jury dates back, as I understand it, to feudal times, to days when both judges and juries were laymen and peers, to the time when the grand jury not only presented the case, not only decided that there was prima facie evidence on which the accused should be brought to trial, but actually tried the case itself.

Under our modern practices today, the grand jury does not serve many of its traditional functions. It is not an effective screening body between the accused and the court, as was stated to us by witnesses and has been seen by statistics which unfortunately I do not have here. The practice has been for the grand jury to be nothing more than a conduit between state's attorneys and the court.

It has been a source of delayed justice rather than advanced justice. It has saved

no one from the glare of publicity or the embarrassment or expense of making a defense. In most cases the accused is indicted and it is not until the time of his trial that his final deliverance is made, and even where the grand jury does not indict, its actions or the ones which affect the accused are not such as to protect his privacy or secrecy.

Every time you pick up the newspaper you will see where some case was taken to the grand jury or where investigation was made, and whether or not an indictment was returned the privacy of the individual and the protection against unjust accusation is there nevertheless.

There is a tendency away from the grand jury system, and again I do not think this is any violent change that should occur immediately upon the adoption of the constitution, but if we embed in the new constitution a system which in large part has outlived its usefulness —

THE CHAIRMAN: You have one-quarter minute, Delegate Bothe.

DELEGATE BOTHE: We are going backward. There is no protection for the accused which does not presently exist under our laws which will not continue to exist unabated if we forget or leave out this at best superfluous provision.

I suggest that by reconsidering Amendments 17 and 18 we leave that space blank in the new constitution.

THE CHAIRMAN: Does any delegate desire to speak in opposition to the motion?

Delegate Sherbow?

DELEGATE SHERBOW: Mr. Chairman, ladies and gentlemen, the grand jury system in Maryland is probably one of the strongest bulwarks of protection for the individual citizen that has ever been devised. If we abandon it or take it out of our system, it means the state's attorney may then proceed in the form of an information.

You may or may not have any of the safeguards which we have at the present time. But what is this glib, easy statement, "we do not have anything", "it is a rubber stamp", "it does not do anything", "everything is written in the newspapers", "nobody has protection"?

I am going to read to you from a case in the Court of Appeals of Maryland where there was a decision based on these facts. A man felt that he had a right to present